IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

AS.No. 252 of 2000()

OS.1469/1995 of THE SUB COURT, THRISSUR

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APPELLANT:

COCHIN DEVASWOM BOARD,
REPRESENTED BY THE SECRETARY.

BY ADV. SRI.M.RAMESH CHANDER
SRI.M.VIJAYAKUMAR

RESPONDENTS:

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1. SUDHIN, AGED 24 YEARS, S/O.KOOTTALA SUKUMARAN, KANDASSAMKADAVU DESOM, PADIYAM VILLAGE, THRISSUR TALUK,.

2. ADHIYARATHVEETTIL A.A.GOPI, CONTRACTOR, CHERAYI VILLAGE AND DESOM, KODUNGALLUR TALUK.

BY ADV. SMT.V.P.SEEMANDINI
SRI.T.A.SHAJI
SMT.T.V.NEEMA
SMT.RAGAM.S.MOHAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON 21/12/2006 DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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A.S.No.252 of 2000

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Dated this the 21st day of December, 2006.

JUDGMENT

The appellant Cochin Devaswom Board auctioned out the right to fire pop guns in connection with the religious ceremonies of the Thriprayar temple. The second respondent-second defendant bid the auction and executed Ext.B1.

2. The first respondent plaintiff sustained injuries on account of the misfiring of the pop guns in the temple while he was in the queue for darshan. He sued for damages. The second respondent-second defendant, the contractor remained ex-parte. The trial court held that the incident occurred due to the negligence of the second respondent-second defendant and that he is an agent of the first defendant by virtue of the terms of Ext.B1 and that therefore, the first

defendant along with the second respondent-second defendant is liable to satisfy the decree for damages, jointly and severally.

3. In this appeal of the first defendant, the only plea urged is that in terms of Ext.B1, it is the exclusive liability of the second respondent-second defendant contractor to satisfy all such claims, including all liabilities under the Explosive Laws etc. and that these are matters that are specifically governed by the terms of the contract (Ext.B1) between the parties.

4. The second respondent-second defendant, who appears through counsel, though has not filed any appeal, urged that the quantum of damages is high and that the accident could have occurred, not due to any wilful neglect or negligence of the second respondent-second defendant. That question no more arises for decision in view of the finality

attained by the judgment of the court below, on that issue, and because there is no appeal filed by the second respondent-second defendant. That part is rightly pointed out by the trial court and it was for the second respondent-second defendant to explain the reason for the accident and that the maxim res ipsa loquitor applies to the facts of the case.

5. Be that as it may, adverting to the terms of Ext.B1, it has been found by the trial court that the liability to provide pop gun firing in the months of Vrischikam, Meenam and other, compulsory festivities have to be carried out by the second respondent-second defendant free of cost. The finding of the court below that the second respondent-second defendant is bound to do it free, is plainly wrong because that forms part of the consideration for the contract enabling the second respondent-second defendant to fire pop gun in

terms of the entrustment by the devotees as part of the religious offerings.

6. Though the first defendant cannot claim immunity from paying compensation to the plaintiff, it is entitled to plead that the second respondent-second defendant is bound to compensate the first defendant for any payment that it makes by way of damages. This is so because it is an express provision of Ext.B1 that the second respondent-second defendant shall ensure all necessary statutory and other preventive measures in terms of the Explosive Laws and that he shall indemnify the first defendant for any loss that it sustains on account of the act of the second respondent-second defendant. Under such circumstances, the finding of the trial court that defendants 1 and 2 are jointly and severally liable to satisfy the impugned decree, requires to be modified directing that on the first defendant satisfying the decree,

it will be entitled to reimbursement from the second respondent-second defendant.

In the result, the impugned decree is modified directing that the first defendant shall be entitled to reimbursement from the second respondent-second defendant, of all the moneys it pays in discharge of the liability under the impugned decree. The appeal is allowed to the above extent. However, there will be no order as to costs.

Thottathil B.Radhakrishnan,
Judge.

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